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PATENT APPLICATION

ATTORNEY DOCKET NO. 10981247-1



IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Robert W. Dmitroca

Serial No.: 09/456,603

Examiner: S. F. Willett

Filing Date: Dec. 8, 1999

Group Art Unit: 2141

Title: METHOD AND SYSTEM FOR MANAGING PERFORMANCE DATA ABOUT A NETWORK

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TRANSMITTAL OF REPLY BRIEF

Technology Center 2100

Sir:

Transmitted herewith in **triplicate** is the Reply Brief with respect to the Examiner's Answer mailed on **Feb. 24, 2004**. This Reply Brief is being filed pursuant to 37 CFR 1.193(b) within two months of the date of the Examiner's Answer.

(Note: Extensions of time are not allowed under 37 CFR 1.136(a))

(Note: Failure to file a Reply Brief will result in dismissal of the Appeal as to the claims made subject to an expressly stated new grounds of rejection.)

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Respectfully submitted,

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#17
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Docket No.: 10981247-1
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**


Re Patent Application of:
Robert W. Dmitroca

Application No.: 09/456,603

Confirmation No.: 6669

Filed: December 8, 1999

Art Unit: 2141

For: METHOD AND SYSTEM FOR MANAGING
PERFORMANCE DATA ABOUT A
NETWORK

Examiner: S. F. Willett

APPELLANT'S REPLY BRIEF TO EXAMINER'S ANSWER(37 C.F.R. 1.193(b))

MS Appeal Brief - Patents
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Technology Center 2100

Dear Sir:

This reply brief is in response to the Examiner's Answer mailed February 24, 2004. This Reply Brief is also in furtherance of the Notice of Appeal, dated May 15, 2003, and Appellant's Supplemental Appeal Brief and Request for Reinstatement of Appeal, dated December 18, 2003. This Reply Brief is transmitted in triplicate.

Appellant respectfully requests withdrawal of the final rejection and allowance of the above-captioned application. Should the Primary Examiner not find the comments contained herein persuasive, acknowledgment of receipt and entry of this Reply Brief is requested.

I. Introduction

Below, Appellant addresses aspects of the Examiner's responses set forth in the Examiner's Answer mailed February 24, 2004. Appellant hereby reiterates the arguments presented in the Appellant's Supplemental Appeal Brief dated December 18, 2003 by reference thereto. Although many arguments previously raised in Supplemental Appeal Brief are restated or rephrased below, in the interest of brevity, the arguments from the

Supplemental Appeal Brief are not wholly restated herein. Appellant submits further arguments below to address specific statements asserted by the Examiner in the “Response to Arguments” section of the Examiner’s Answer. The Examiner’s responses are addressed in the order in which they generally appear in the Examiner’s Answer.

II. Issues

Claims 1-4 and 12-14 stand rejected under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent No. 5,226,118 to Baker et al.(hereinafter *Baker*); claims 5, 7, 15, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Baker* in view of U.S. Patent No. 6,321,264 to Fletcher et al.(hereinafter *Fletcher*); and claims 6 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Baker* in view U.S. Patent No. 5,883,924 to Siu et al.(hereinafter *Siu*).

III. Rejection under 35 U.S.C. § 102 (e)—*Baker* Claims of Group I (1-4 & 12-14)

In the Supplemental Appeal Brief dated December 18, 2003, Appellant provided arguments asserting the insufficiency of *Baker*. These arguments are still applicable to the above rejection and are, accordingly, incorporated herein. However, for the sake of brevity, those arguments will not be repeated herein. Appellant respectfully requests that the Board consider these previous arguments in combination with the comments set forth below.

A. *Baker* fails to teach every element of the claim

1. Claims 1 and 12

Claims 1 and 12 require:

storing of the data value in the array, if the data value is not within the current range.

On page 5 of the Examiner’s answer, the Examiner asserts that column 11, lines 38-42 of *Baker* discloses storing the data in the array even if it is outside the range. Appellant respectfully points out that this assertion by the Examiner is incorrect. First, the cited portion of *Baker* discloses that the system can access statistical information by indexing into each record to the appropriate depth. (*Baker*, col. 11, lns 34-39). The mere disclosure of accessing statistical information by indexing fails to teach or suggest storing the data value in

the array if the value is not within the current range. The Examiner simply cites this passage but fails to explain how the cited portion teaches this feature of claims 1 and 12. In addition, the cited portion of *Baker* discloses that the storage of process definition parameters in a measurement data file (162) provides automatic documentation of data and allows for detailed data analysis by the engineer using a data base management program. (*Baker*, col. 11, lns 39-43). Yet, storing process definition parameters in some measurement file to provide automatic documentation fails to disclose storing the data value in the array if the value is not within the current range. Appellants respectfully assert that the mere disclosure of “storage of process definition parameters” does not indicate that *Baker* stores data as required by claims 1 and 12. Moreover, the process definition parameters of *Baker* are parameter values entered by an engineer that are used to set up and run the process. (*Baker*, col. 11, lns 25-42). However, the data value of claims 1 and 12 is a data value that represents the performance data about a network. Clearly, parameters that are entered by engineers and used to set up and run a process are not data values indicating performance data about a network. Thus, *Baker* fails to teach every element of claims 1 and 12.

Claims 1 and 12 further require:

scaling the current range and the size of the portions, if the data value is not within the current range.

The Examiner asserts on page 5 of the Examiner’s answer that column 6, lines 26-27 and lines 43-48; column 8, lines 43-48; and column 14, lines 18-26 disclose these features of claims 1 and 12. Appellant respectfully asserts that the Examiner is incorrect.

The first portion cited by the Examiner teaches a vertical highlight bar (62) used to select individual measurement sets and used to access data records in a database. (*Baker*, col. 6, lns 25-28). Clearly, a vertical highlight bar and how it is used fails to teach or mention scaling the current range and the size of the portions, if the data value is not within the current range. Thus, this section of *Baker* is erroneously interpreted to teach the above features of claims 1 and 12.

The second section cited by the Examiner teaches a scroll data option from a pull down menu (70) in order to display data points not presently on the screen and an expand data option that is used to effectively zoom in on the present image of the data chart in order

to display to a user an area around a selected data point by some fixed increment. (*Baker*, col. 6, lns 43-48). However, the disclosure of a scroll and expand data option to change the present view of a data chart fails to teach or suggest the scaling of the current range and size of the portions if the data value is not within the current range. Thus, this assertion by the Examiner is incorrect, and this section of *Baker* fails to disclose the above features of claims 1 and 12.

The third section cited the Examiner teaches a data analysis chart with various display parameters, defining how it is displayed, and stored data analysis chart definitions for each parameter that are initially defined as a default set when the process first begins. (*Baker*, col. 8, lns 43-48). Yet, the disclosure of a data analysis chart with display parameters fails to teach or disclose the scaling of the current range and size of the portions if the data value is not within the current range. Thus, this assertion by the Examiner is incorrect, and this section of *Baker* fails to disclose the above features of claims 1 and 12.

The fourth section cited by the Examiner discloses an expansion bar to allow users to change the present view of various charts according to a user's preference. (*Baker*, col. 14, lns 18-26). Thus, *Baker* discloses the ability to change the views of a chart according to a user's liking. Yet, the disclosure of some expansion selection element (thumb) that allows users to zoom in on a data point or to zoom out and show several data points merely discloses a manner in which to change the display of a data chart. However, teaching how to change the display of a data chart according to a user's liking does not disclose the scaling of the current range and size of the portions if the data value is not within the current range. Thus, this assertion by the Examiner is incorrect, and this section of *Baker* fails to disclose all the elements of claims 1 and 12.

Furthermore, the Examiner asserts that *Baker* discloses display scaling (*Baker*, col. 14, lns 18-26; col. 6, lns 43-48) and computational scaling (*Baker*, col. 6, lns 26-27; col. 8, lns 43-48). (Examiner's Answer, page 8, Response to Argument Section). This scaling is related to adjusting how the data is displayed to a user on some type of GUI. However, *Baker* fails to disclose the scaling of the range and size of portions if the data is outside of a current range as required by claims 1 and 12. In addition, the Examiner asserts that these scaling steps are inherent in displaying any GUI display of a graph because the user has to identify and select points of interest. (Examiner's Answer, page 8). Yet, the disclosure of an

ability to select data points of interest from available charts simply discloses that a user can choose various data points and the type of analysis to be performed on the selected data point. However, this assertion by the Examiner is incorrect, and there is no mention or teaching of scaling the current range and size of portions if the data value is not within the current range. Therefore, Appellant respectfully requests the Board that the rejection of claims 1 and 12 under 35 U.S.C. §102(e) be withdrawn.

Accordingly, *Baker* fails to disclose all the elements of independent claims 1 and 12, and thus, *Baker* also fails to disclose all the elements of claims 2-4, 13, and 14.

**IV. Rejection under §103(a)—combination of *Baker* in view of *Fletcher*
Claims of Group II (5, 7, 15, & 17)**

The Examiner makes no new assertions regarding the rejection of claims 5, 7, 15, and 17 under 35 U.S.C. § 103 (a). In the Supplemental Appeal Brief filed December 18, 2003, Appellant provided arguments asserting the insufficiency of the cited motivation and the insufficiency of the cited combination. These arguments are still applicable to the above rejection and are, accordingly, incorporated herein. However, for the sake of brevity, those arguments will not be repeated herein. Appellant respectfully requests that the Board consider these previous arguments in combination with the comments set forth below.

Appellant respectfully disagrees with the Examiner's assertion that the Appellant's arguments in response to the 35 U.S.C. § 103 (a) rejection fail to comply with 37 CFR 1.111(b). In making this assertion, the Examiner asserts that the Appellant's arguments amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the cited portions of the references and relevant portions of the reference. (Examiner's Answer, page 9, paragraph 13). Appellant respectfully disagrees, as Appellant has clearly pointed out specific language in each of the independent claims and then discussed how the combination of references does not teach the language. Therefore, Appellant believes that the Supplemental Appeal Brief of December 18, 2003 complies with 37 CFR 1.111(b).

A. Lack of Motivation

The original motivation to combine *Baker* and *Fletcher* submitted in the Office Action of September 24, 2003, and maintained in the Examiner's Answer of February 24, 2004 is still the motivation of record used to combine the references. This motivation is as follows:

The motivation to incorporate data consisting of time delays insures that relevant data is displayed. Thus, it would have been obvious to one of ordinary skill in the art to incorporate various time delay data as taught in *Fletcher* into the data system described in *Baker* because *Baker* operates with graphical data and *Fletcher* suggests that said data can be displayed on a GUI. (Examiner's Answer, page 6, paragraph 8).

The commentary provided by the Examiner in the Examiner's Answer does not overcome the insufficiencies of this motivation.

The Examiner incorrectly states that motivation to combine the applied art is provided by the fact that *Fletcher* teaches a display device in Figure 2 that is used with a client computer that will display generated data. (Examiner's Answer, page 9). However, the mere fact that *Fletcher* discloses a display device does not establish motivation to combine the applied art. Moreover, one of ordinary skill in the art would not have been motivated to combine *Baker* and *Fletcher* based on the idea that *Fletcher* teaches a display device because *Baker* clearly discloses the use of a display device, such as a GUI. For example, Figure 1 of *Baker* clearly depicts a display device (36), such as a color monitor, for displaying various data analysis charts. (*Baker*, col. 4, lns 40-47). Thus, there is no motivation to combine *Fletcher* with the teachings of *Baker* because *Baker* discloses its own display device.

Furthermore, this assertion by the Examiner is merely a statement that the reference can be modified. However, the mere fact that a reference can be modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990) cited by M.P.E.P. § 2143.01. Thus, the Examiner has failed to establish the presence of proper motivation and the comments provided by the Examiner do not satisfy the deficiencies of the current motivation as discussed by Appellant in the Supplemental Appeal Brief.

B. Failure to teach all claim limitations

In the Supplemental Appeal brief of December 18, 2003, Appellant provided arguments asserting the insufficiency of the cited combination. These arguments are still applicable to the above rejection and are incorporated herein. However, for the sake of brevity, those arguments will not be repeated herein. Appellant respectfully requests the board consider these previous arguments in combination with the comments set forth below.

The commentary provided by the Examiner in the Examiner's Answer does not overcome the insufficiencies of the applied combination of *Baker* and *Fletcher*. The Examiner simply states that *Baker* teaches a data analysis system except for explicitly teaching using data that consists of network delay times for packets. (Examiner's Answer, page 6). The Examiner then states that *Fletcher* teaches a data display system that teaches a data packet that takes a measurable amount of time to travel from a client computer system to a server. (Examiner's Answer, page 6). However, these assertions by the Examiner are incomplete and fail to establish that the applied art teaches all the limitations of claims 5, 7, 15, and 17 because neither *Fletcher*, *Baker*, nor any combination thereof disclose scaling a current range and size of portions if the data value is not within the current range as required by independent claims 1 and 12, from which claims 5, 7, 15, and 17 depend. Thus, the combination of *Baker* and *Fletcher* fails to disclose all the elements of claims 5, 7, 15, and 17.

The Examiner is also incorrect in his assertion on page 7 of the Examiner's answer that the disclosure of *Baker* at column 14, lines 61-62 discloses re-calculating of the numbers of the plurality of bins according to the scaled size of the portions as required by claims 7 and 17. The cited portion discloses that a user can select a number of data points from a chart and then execute a Gallery command to produce a display of graphical or statistical combinations of other images. (*Baker*, col. 14, lns 49-65). In addition, *Baker* discloses that every cell in display (302) of Figure 23 can be defined as a particular set of measurement parameters or calculated parameter values or a combination of two or more such sets of values. (*Baker*, col. 15, lns 1-11). Yet, the mere use of the word "calculated" does not imply that *Baker* discloses re-calculating of the numbers as required by claims 7 and 17. Moreover, the mere disclosure of defining a cell as a combination of parameter or calculated parameter values does not disclose recalculating the numbers of the plurality of bins according to the scaled size of portions. Thus, the combination of *Baker* and *Fletcher* fails to disclose these additional

requirements of claims 7 and 17. Therefore, the recited combination fails to disclose all the elements of claims 5, 7, 15, and 17, and Appellant respectfully requests the Board that the rejection of claims 5, 7, 15, and 17 under 35 U.S.C. § 103(a) be withdrawn.

**V. Rejection under § 103 (a)—Combination of *Baker* in view of *Siu*
Claims of Group III (6 & 16)**

The Examiner rejects claims 6 and 16 using the same rejection set forth in the Office Action of September 24, 2003. In the Supplemental Appeal Brief dated December 18, 2003, Appellant provided arguments asserting the insufficiency of the cited combination. These arguments are still applicable to the above rejection and are, accordingly, incorporated herein. However, for the sake of brevity, those arguments will not be repeated herein. Appellant respectfully requests that the Board consider these previous arguments in combination with the comments set forth below.

The Examiner asserts on page 9 of the Examiner's answer that the Appellant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the cited portions of *Baker* in view of *Siu*. Appellant respectfully disagrees, as Appellant has pointed out specific language in each of the independent claims and then discussed how the combination of references does not teach the language. Therefore, Appellant believes that the Supplemental Appeal Brief of December 18, 2003 complies with 37 CFR 1.111(b).

A. Failure to teach all claim limitations

The Examiner asserts on page 7 of the Examiner's Answer that the disclosure of *Siu* is relied on as teaching that a user may specify a histogram range and that each bin of the histogram is defined by a range of program clock reference (PCR) jitter. (*Siu*, col. 7, lns 1-5). However, *Siu* does not cure the deficiencies of *Baker* discussed above. Therefore, the Examiner's assertion that the combination of *Baker* and *Siu* discloses all the elements of claims 6 and 16 is incorrect as neither *Siu*, *Baker*, nor any combination thereof discloses the scaling of the current range and size of the portions if the data value is not within the current range as required by claims 6 and 16. Thus, the combination of *Baker* in view of *Siu* fails to teach all the elements of claims 6 and 16.

VI. Examiner's Responses to Previous Arguments

The Examiner makes several statements in the "Response to Arguments" section beginning on page 7 of the Examiner's Answer. Appellant respectfully disagrees with the Examiner's comments as set forth below.

The Examiner asserts:

"that the present claim language simply creates a histogram or bar graph that adjusts ranges for each bar...and depending on the number of values that fall within the range, the bin or bar is incremented so the height of the bar increases on the y-axis with more data values or when the range is increased since more values will fall in a larger range." (Examiner's Answer, page 7-8).

This interpretation by the Examiner is incorrect. The claim language of claims 1 and 12 is not limited as interpreted by the Examiner as merely creating a histogram wherein the height of a bar increases with more data values or wherein the height of the bar increases when the range is increased because more values will fall in a large range.

This interpretation by the Examiner is erroneous because the Examiner clearly disregards at least one claim element. The range and the size of portions in claims 1 and 12 is scaled if the data value is not within the current range. Therefore, if all data values are within the current range then the current range and size of portions would remain the same as opposed to the Examiner's erroneous interpretation of increasing the range merely because more values would fit in a large range. This interpretation is incorrect and is not derived from reading the claim as a whole. Moreover, when evaluating the scope of the claim, every limitation in the claim must be considered, and Office personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation. M.P.E.P. § 2106. Instead, the claim as a whole must be considered. *Diamond v. Diehr*, 450 U.S. at 188-98, M.P.E.P. § 2106 II(C).

In addition, the Examiner responds to previous arguments by pointing to statements relating to software being too slow to handle adjustments in bin size. The Examiner claims that such methods to achieve such broad limitations are not in the present claims. (Examiner's Answer, page 8). However, these statements by the Examiner are made out of context and are made with reference to the Summary of the Invention of the Supplemental Appeal Brief. Appellant respectfully points out that the Summary of the Invention is not the

claim language and is merely a concise statement of the invention. Yet, Appellant's arguments are based on the claim language and not the explanation of the invention as recited in the Summary of the Invention section of the Supplemental Appeal Brief. Thus, these assertions by the Examiner are irrelevant and have no bearing on the patentability of the pending claims.

VII. Conclusion

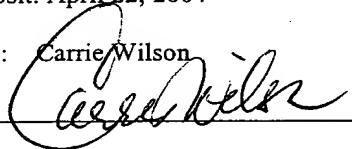
For the reasons set forth in the Supplemental Appeal Brief of December 18, 2003, and as supplemented herein, Appellant respectfully contends that each of claims 1-20 are patentable over the applied art. Appellant respectfully requests the Primary Examiner to reopen prosecution and allow this application. Failing that, Appellant respectfully requests the Board to reverse the Examiner's rejection for all the reasons set forth herein and as set forth in the Supplemental Appeal Brief on Appeal.

Appellant has enclosed all fees believed to be due with this response. However, if additional fees are due or there is an overpayment, please use Deposit Account No. 50-1078, under Order No. 10981247-1 from which the undersigned is authorized to draw.

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Date of Deposit: April 22, 2004

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